

1 MICHAEL J. ZINNA (*pro hac vice*)
mzinna@kelleydrye.com
2 LEE BRENNER (State Bar No. 180235)
lbrenner@kelleydrye.com
3 DAVID FINK (State Bar No. 169212)
dfink@kelleydrye.com
4 DAVID G. LINDENBAUM (*pro hac vice*)
dlindenbaum@kelleydrye.com
5 WHITNEY M. SMITH (*pro hac vice*)
wsmith@kelleydrye.com
6 **KELLEY DRYE & WARREN LLP**
101 Park Avenue
7 New York, New York 10178
Telephone 212-808-7800
8 Facsimile 973-503-5950

9 Attorneys for Plaintiff
ZOMM, LLC

10 DAVID R. EBERHART (S.B. #195474)
deberhart@omm.com
11 LUANN L. SIMMONS (S.B. #203526)
lsimmons@omm.com
12 **O'MELVENY & MYERS LLP**
Two Embarcadero Center, 28th Floor
13 San Francisco, California 94111-3823
14 Telephone: +1 415 984 8700
Facsimile: +1 415 984 8701
15

16 Attorneys for Defendant
APPLE INC.

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **OAKLAND DIVISION**

20 ZOMM, LLC,

21 Plaintiff,

22 v.

23 APPLE INC.,

24 Defendant.

Case No. 4:18-cv-04969-HSG

STIPULATED PROTECTIVE ORDER

Judge: Haywood S. Gilliam, Jr.

1 Plaintiff Zomm, LLC (“Plaintiff”) and Defendant Apple Inc. (“Defendant”) anticipate that
2 documents, testimony, or information containing or reflecting confidential, proprietary, trade
3 secret, and/or commercially sensitive information are likely to be disclosed or produced during
4 the course of discovery, initial disclosures, and supplemental disclosures in this case and request
5 that the Court enter this Order setting forth the conditions for treating, obtaining, and using such
6 information.

7 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds good cause
8 for the following Agreed Protective Order Regarding the Disclosure and Use of Discovery
9 Materials (“Order” or “Protective Order”).

10 **1. PURPOSES AND LIMITATIONS**

11 (a) Protected Material designated under the terms of this Protective Order shall be
12 used by a Receiving Party solely for this case, and shall not be used directly or indirectly for any
13 other purpose whatsoever.

14 (b) The Parties acknowledge that this Order does not confer blanket protections on all
15 disclosures during discovery, or in the course of making initial or supplemental disclosures under
16 Rule 26(a). Designations under this Order shall be made with care and shall not be made absent a
17 good faith belief that the designated material satisfies the criteria set forth below. If it comes to a
18 Producing Party’s attention that designated material does not qualify for protection at all, or does
19 not qualify for the level of protection initially asserted, the Producing Party must promptly notify
20 all other Parties that it is withdrawing or changing the designation.

21 (c) The Parties further acknowledge that this Order does not entitle them to file
22 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
23 followed and the standards that will be applied when a party seeks permission from the court to
24 file material under seal.

25 **2. DEFINITIONS**

26 (a) “Discovery Material” means all items or information, including from any non-
27 party, regardless of the medium or manner generated, stored, or maintained (including, among
28 other things, testimony, transcripts, or tangible things) that are produced, disclosed, or generated

1 in connection with discovery or Rule 26(a) disclosures in this case.

2 (b) “Outside Counsel” means (i) outside counsel who appear on the pleadings as
3 counsel for a Party and (ii) partners, associates, and staff of such counsel to whom it is reasonably
4 necessary to disclose the information for this litigation.

5 (c) “Patent-in-suit” means U.S. Patent No. 8,351,895, and any other patent asserted in
6 this action, as well as any related patents, patent applications, provisional patent applications,
7 continuations, and/or divisionals.

8 (d) “Party” means any party to this case, including all of its officers, directors,
9 employees, consultants, retained experts, and outside counsel and their support staffs.

10 (e) “Producing Party” means any Party or non-party that discloses or produces any
11 Discovery Material in this case.

12 (f) “Protected Material” means any Discovery Material that is designated as
13 “CONFIDENTIAL,” “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL
14 - OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE,” as provided for in this Order.
15 Protected Material shall not include: (i) advertising materials that have been actually published or
16 publicly disseminated; and (ii) materials that show on their face they have been disseminated to
17 the public.

18 (g) “Receiving Party” means any Party who receives Discovery Material from a
19 Producing Party.

20 (h) “Source Code” means computer code, scripts, assembly, binaries, object code,
21 source code listings and descriptions of source code, object code listings and descriptions of
22 object code, Hardware Description Language (HDL) or Register Transfer Level (RTL) files that
23 describe the hardware design of any ASIC or other chip, and Computer Aided Design (CAD) files
24 that describe the hardware design of any component.

25 **3. COMPUTATION OF TIME**

26 The computation of any period of time prescribed or allowed by this Order shall be
27 governed by the provisions for computing time set forth in Federal Rules of Civil Procedure 6.
28

1 **4. SCOPE**

2 (a) The protections conferred by this Order cover not only Discovery Material
3 governed by this Order as addressed herein, but also any information copied or extracted
4 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
5 conversations, or presentations by Parties or their counsel in court or in other settings that might
6 reveal Protected Material.

7 (b) Nothing in this Protective Order shall prevent or restrict a Producing Party's own
8 disclosure or use of its own Protected Material for any purpose, and nothing in this Order shall
9 preclude any Producing Party from showing its Protected Material to an individual who prepared
10 the Protected Material.

11 (c) Nothing in this Order shall be construed to prejudice any Party's right to use any
12 Protected Material in court or in any court filing with the consent of the Producing Party or by
13 order of the Court.

14 (d) This Order is without prejudice to the right of any Party to seek further or
15 additional protection of any Discovery Material, or the right to seek to modify this Order in any
16 way, including, without limitation, an order that certain matter not be produced at all.

17 **5. DURATION**

18 Even after the termination of this case, the confidentiality obligations imposed by this
19 Order shall remain in effect until a Producing Party agrees otherwise in writing or a court order
20 otherwise directs.

21 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

22 (a) Basic Principles. All Protected Material shall be used solely for this case or any
23 related appellate proceeding, and not for any other purpose whatsoever, including without
24 limitation any other litigation, patent prosecution or acquisition, patent reexamination or reissue
25 proceedings, or any business or competitive purpose or function. Protected Material shall not be
26 distributed, disclosed or made available to anyone except as expressly provided in this Order.

27 (b) Patent Prosecution Bar. Absent the written consent of the Producing Party, any
28 person who receives one or more items designated "CONFIDENTIAL – ATTORNEYS' EYES

1 ONLY” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” shall not be
2 involved in and shall be screened from any of the following activities: (i) advising on, consulting
3 on, preparing, prosecuting, drafting, editing, and/or amending of patent applications,
4 specifications, claims, and/or responses to office actions, or otherwise affecting the scope of
5 claims in patents or patent applications relating to the functionality, operation, and design of
6 systems and methods for making emergency calls via a mobile phone or wearable electronic
7 device, including emergency calls based on location, and sending emergency messages (generally
8 or as described in any patent in suit) after an emergency call is placed, before any foreign or
9 domestic agency, including the United States Patent and Trademark Office; and (ii) the
10 acquisition of patents (including patent applications), or the rights to any such patents or patent
11 applications with the right to sublicense, that claim systems or methods for making emergency
12 calls via a mobile phone or wearable electronic device, including emergency calls based on
13 location, and sending emergency messages (generally or as described in any patent in suit) after
14 an emergency call is placed. These prohibitions are not intended to and shall not preclude
15 counsel from participating in proceedings on behalf of a Party challenging the validity of any
16 patent, including a reexamination, inter partes review, covered business method review, post-
17 grant review, or reissue proceeding, but are intended, inter alia, to preclude counsel from
18 affecting the scope of claims in reexamination, inter partes review, covered business method
19 review, or reissue proceedings on behalf of a patentee. These prohibitions shall begin when
20 access to “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY – SOURCE CODE” materials are first received by the affected
22 individual, and shall end two (2) years after the final resolution of this action, including all
23 appeals.

24 (c) Secure Storage, No Export. Protected Material must be stored and maintained by a
25 Receiving Party at a location in the United States and in a secure manner that ensures that access
26 is limited to the persons authorized under this Order. To ensure compliance with applicable
27 United States Export Administration Regulations, Protected Material may not be exported outside
28 the United States or released to any foreign national (even if within the United States).

1 (d) Legal Advice Based on Protected Material. Nothing in this Protective Order shall
2 be construed to prevent counsel from advising their clients with respect to this case based in
3 whole or in part upon Protected Materials, provided counsel does not disclose the Protected
4 Material itself except as provided in this Order.

5 (e) Limitations. Nothing in this Order shall restrict in any way a Producing Party's
6 use or disclosure of its own Protected Material. Nothing in this Order shall restrict in any way the
7 use or disclosure of Discovery Material by a Receiving Party: (i) that is or has become publicly
8 known through no fault of the Receiving Party; (ii) that is lawfully acquired by or known to the
9 Receiving Party independent of the Producing Party; (iii) previously produced, disclosed and/or
10 provided by the Producing Party to the Receiving Party or a non-party without an obligation of
11 confidentiality and not by inadvertence or mistake; (iv) with the consent of the Producing Party;
12 or (v) pursuant to order of the Court.

13 **7. DESIGNATING PROTECTED MATERIAL**

14 (a) Available Designations. Any Producing Party may designate Discovery Material
15 with any of the following designations, provided that it meets the requirements for such
16 designations as provided for herein: "CONFIDENTIAL," "CONFIDENTIAL – ATTORNEYS'
17 EYES ONLY," or "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE
18 CODE."

19 (b) Each Party or Non-Party that designates information or items for protection under
20 this Order must take care to limit any such designation to specific material that qualifies under the
21 appropriate standards. To the extent it is practical to do so, the Designating Party must designate
22 for protection only those parts of material, documents, items, or oral or written communications
23 that qualify – so that other portions of the material, documents, items, or communications for
24 which protection is not warranted are not swept unjustifiably within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
26 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
27 unnecessarily encumber or retard the case development process or to impose unnecessary
28 expenses and burdens on other parties) expose the Designating Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it designated
2 for protection do not qualify for protection at all or do not qualify for the level of protection
3 initially asserted, that Designating Party must promptly notify all other parties that it is
4 withdrawing the mistaken designation.

5 (c) Written Discovery and Documents and Tangible Things. Written discovery,
6 documents (which include "electronically stored information," as that phrase is used in Federal
7 Rule of Procedure 34), and tangible things may be designated with one of the designations listed
8 in Paragraph 7(a) by placing the appropriate designation on every page of the written material
9 prior to production. For digital files being produced, the Producing Party may mark each
10 viewable page or image with the appropriate designation, and mark the medium, container, and/or
11 communication in which the digital files were contained. In the event that original documents are
12 produced for inspection, the original documents shall be presumed "CONFIDENTIAL –
13 ATTORNEYS' EYES ONLY" during the inspection and re-designated, as appropriate during the
14 copying process.

15 (d) Native Files. Where electronic files and documents are produced in native
16 electronic format, such electronic files and documents shall be designated for protection under
17 this Order by appending to the file names or designators information indicating whether the file
18 contains "CONFIDENTIAL," "CONFIDENTIAL – ATTORNEYS' EYES ONLY," or
19 "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE," material, or
20 shall use any other reasonable method for so designating Protected Materials produced in
21 electronic format. When electronic files or documents are printed for use at deposition, in a court
22 proceeding, or for provision in printed form to an expert or consultant pre-approved pursuant to
23 paragraph 12, the party printing the electronic files or documents shall affix a legend to the
24 printed document corresponding to the designation of the Designating Party and including the
25 production number and designation associated with the native file. No one shall seek to use in
26 this litigation a .tiff, .pdf or other image format version of a document produced in native file
27 format without first (1) providing a copy of the image format version to the Producing Party so
28 that the Producing Party can review the image to ensure that no information has been altered, and

1 (2) obtaining the consent of the Producing Party, which consent shall not be unreasonably
2 withheld.

3 (e) Depositions and Testimony. Parties or testifying persons or entities may designate
4 depositions and other testimony with the appropriate designation by indicating on the record at
5 the time the testimony is given or by sending written notice of how portions of the transcript of
6 the testimony is designated within thirty (30) days of receipt of the transcript of the testimony. If
7 no indication on the record is made, all information disclosed during a deposition shall be deemed
8 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” until the time within which it may be
9 appropriately designated as provided for herein has passed. Any Party that wishes to disclose the
10 transcript, or information contained therein before the 30-day period expires, may provide written
11 notice of its intent to treat the transcript as non-confidential, after which time, any Party that
12 wants to maintain any portion of the transcript as confidential must designate the confidential
13 portions within fourteen (14) days, or else the transcript may be treated as non-confidential. Any
14 Protected Material that is used in the taking of a deposition shall remain subject to the provisions
15 of this Protective Order, along with the transcript pages of the deposition testimony dealing with
16 such Protected Material. In such cases the court reporter shall be informed of this Protective
17 Order and shall be required to operate in a manner consistent with this Protective Order. In the
18 event the deposition is videotaped, the original and all copies of the videotape shall be marked by
19 the video technician to indicate that the contents of the videotape are subject to this Protective
20 Order, substantially along the lines of “This videotape contains confidential testimony used in this
21 case and is not to be viewed or the contents thereof to be displayed or revealed except pursuant to
22 the terms of the operative Protective Order in this matter or pursuant to written stipulation of the
23 parties.” Counsel for any Producing Party shall have the right to exclude from oral depositions,
24 other than the deponent, deponent’s counsel, the reporter and videographer (if any), any person
25 who is not authorized by this Protective Order to receive or access Protected Material based on
26 the designation of such Protected Material. Such right of exclusion shall be applicable only
27 during periods of examination or testimony regarding such Protected Material.
28

1 **8. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL”**

2 (a) A Producing Party may designate Discovery Material as “CONFIDENTIAL” if it
3 contains or reflects confidential, proprietary, and/or commercially sensitive information.

4 (b) Unless otherwise ordered by the Court, Discovery Material designated as
5 “CONFIDENTIAL” may be disclosed only to the following:

6 (i) The Receiving Party’s Outside Counsel, such counsel’s immediate
7 paralegals and staff, and any copying or clerical litigation support services working at the
8 direction of such counsel, paralegals, and staff;

9 (ii) Not more than three (3) representatives of the Receiving Party who are
10 officers or employees of the Receiving Party, who may be, but need not be, in-house counsel for
11 the Receiving Party, as well as their immediate paralegals and staff, to whom disclosure is
12 reasonably necessary for this case, provided that: (a) each such person has agreed to be bound by
13 the provisions of the Protective Order by signing a copy of Exhibit A; and (b) no unresolved
14 objections to such disclosure exist after proper notice has been given to all Parties as set forth in
15 Paragraph 12 below;

16 (iii) Any outside expert or consultant retained by the Receiving Party to assist
17 in this action, provided that disclosure is only to the extent necessary to perform such work; and
18 provided that: (a) such expert or consultant has agreed to be bound by the provisions of the
19 Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is not a current
20 officer, director, or employee of a Party or of a competitor of a Party, nor anticipated at the time
21 of retention to become an officer, director or employee of a Party or of a competitor of a Party;
22 (c) such expert or consultant accesses the materials in the United States only, and does not
23 transport them to or access them from any foreign jurisdiction; and (d) no unresolved objections
24 to such disclosure exist after proper notice has been given to all Parties as set forth in Paragraph
25 12 below;

26 (iv) Court reporters, stenographers and videographers retained to record
27 testimony taken in this action;

28 (v) The Court, jury, and court personnel;

1 (vi) Graphics, translation, design, and/or trial consulting personnel, having first
2 agreed to be bound by the provisions of the Protective Order by signing a copy of Exhibit A;

3 (vii) Mock jurors who have signed an undertaking or agreement agreeing not to
4 publicly disclose Protected Material and to keep any information concerning Protected Material
5 confidential;

6 (viii) Any mediator or arbitrator who is assigned to hear this matter, and his or
7 her staff, subject to their agreement to maintain confidentiality to the same degree as required by
8 this Protective Order; and

9 (ix) Any other person with the prior written consent of the Producing Party.

10 **9. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL – ATTORNEYS’**
11 **EYES ONLY”**

12 (a) A Producing Party may designate Discovery Material as “CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY” if it contains or reflects information that is extremely confidential
14 and/or sensitive in nature and the Producing Party reasonably believes that the disclosure of such
15 Discovery Material is likely to cause economic harm or significant competitive disadvantage to
16 the Producing Party. The Parties agree that the following information, if non-public, shall be
17 presumed to merit the “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designation: trade
18 secrets, pricing information, financial data, sales information, sales or marketing forecasts or
19 plans, business plans, sales or marketing strategy, product development information, engineering
20 documents, testing documents, employee information, and other non-public information of
21 similar competitive and business sensitivity.

22 (b) Unless otherwise ordered by the Court, Discovery Material designated as
23 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be disclosed only to:

24 (i) The Receiving Party’s Outside Counsel, provided that such Outside
25 Counsel is not involved in competitive decision-making, as defined by *U.S. Steel v. United States*,
26 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a competitor of a Party, and
27 such Outside Counsel’s immediate paralegals and staff, and any copying or clerical litigation
28 support services working at the direction of such counsel, paralegals, and staff;

1 (ii) Any outside expert or consultant retained by the Receiving Party to assist
2 in this action, provided that disclosure is only to the extent necessary to perform such work; and
3 provided that: (a) such expert or consultant has agreed to be bound by the provisions of the
4 Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is not a current
5 officer, director, or employee of a Party or of a competitor of a Party, nor anticipated at the time
6 of retention to become an officer, director, or employee of a Party or of a competitor of a Party;
7 (c) such expert or consultant is not involved in competitive decision-making, as defined by *U.S.*
8 *Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a
9 competitor of a Party; (d) such expert or consultant accesses the materials in the United States
10 only, and does not transport them to or access them from any foreign jurisdiction; and (e) no
11 unresolved objections to such disclosure exist after proper notice has been given to all Parties as
12 set forth in Paragraph 12 below;

13 (iii) Court reporters, stenographers and videographers retained to record
14 testimony taken in this action;

15 (iv) The Court, jury, and court personnel;

16 (v) Graphics, translation, design, and/or trial consulting personnel, having first
17 agreed to be bound by the provisions of the Protective Order by signing a copy of Exhibit A;

18 (vi) Any mediator or arbitrator who is assigned to hear this matter, and his or
19 her staff, subject to their agreement to maintain confidentiality to the same degree as required by
20 this Protective Order; and

21 (vii) Any other person with the prior written consent of the Producing Party.

22 **10. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL – OUTSIDE**
23 **ATTORNEYS’ EYES ONLY – SOURCE CODE”**

24 (a) To the extent production of Source Code becomes necessary to the prosecution or
25 defense of the case, a Producing Party may designate Source Code as “CONFIDENTIAL –
26 OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” if it comprises or includes
27 confidential, proprietary, and/or trade secret Source Code.

28 (b) Nothing in this Order shall be construed as a representation or admission that

1 Source Code is properly discoverable in this action, or to obligate any Party to produce any
2 Source Code.

3 (c) Unless otherwise ordered by the Court, Discovery Material designated as
4 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” shall be
5 subject to the provisions set forth in Paragraph 11 below, and may be disclosed, subject to
6 Paragraph 11 below, solely to:

7 (i) The Receiving Party’s Outside Counsel, provided that such Outside
8 Counsel is not involved in competitive decision-making, as defined by *U.S. Steel v. United States*,
9 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a competitor of a Party, and
10 such Outside Counsel’s immediate paralegals and staff, and any copying or clerical litigation
11 support services working at the direction of such counsel, paralegals, and staff;

12 (ii) Any outside expert or consultant retained by the Receiving Party to assist
13 in this action, provided that disclosure is only to the extent necessary to perform such work; and
14 provided that: (a) such expert or consultant has agreed to be bound by the provisions of the
15 Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is not a current
16 officer, director, or employee of a Party or of a competitor of a Party, nor anticipated at the time
17 of retention to become an officer, director or employee of a Party or of a competitor of a Party;
18 (c) such expert or consultant is not involved in competitive decision-making, as defined by *U.S.*
19 *Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a
20 competitor of a Party; and (d) no unresolved objections to such disclosure exist after proper notice
21 has been given to all Parties as set forth in Paragraph 12 below;

22 (iii) Court reporters, stenographers and videographers retained to record
23 testimony taken in this action;

24 (iv) The Court, jury, and court personnel;

25 (v) Any mediator or arbitrator who is assigned to hear this matter, and his or
26 her staff, subject to their agreement to maintain confidentiality to the same degree as required by
27 this Protective Order; and

28 (vi) Any other person with the prior written consent of the Producing Party.

1 **11. DISCLOSURE AND REVIEW OF SOURCE CODE**

2 (a) Any Source Code that is produced by Plaintiff shall be made available for
3 inspection in electronic format at the New York office of its outside counsel, Kelley Drye and
4 Warren LLP, or any other location mutually agreed by the Parties. Any Source Code that is
5 produced by Apple Inc. will be made available for inspection at the San Francisco office of its
6 outside counsel, O'Melveny & Myers LLP, or any other location mutually agreed by the Parties.
7 Source Code will be made available for inspection between the hours of 8 a.m. and 6 p.m. on
8 business days (i.e., weekdays that are not Federal holidays), although the Parties will be
9 reasonable in accommodating reasonable requests to conduct inspections at other times.

10 (b) Prior to the first inspection of any requested Source Code, the Receiving Party
11 shall provide thirty (30) days' notice of the Source Code that it wishes to inspect. The Receiving
12 Party shall provide fourteen (14) days' notice prior to any additional inspections.

13 (c) Source Code that is designated "CONFIDENTIAL – OUTSIDE ATTORNEYS'
14 EYES ONLY – SOURCE CODE" shall be produced for inspection and review subject to the
15 following provisions, unless otherwise agreed by the Producing Party:

16 (i) All Source Code shall be made available by the Producing Party to the
17 Receiving Party's outside counsel and/or experts in a secure room on a secured computer without
18 Internet access or network access to other computers and on which all access ports have been
19 disabled (except for one printer port), as necessary and appropriate to prevent and protect against
20 any unauthorized copying, transmission, removal or other transfer of any Source Code outside or
21 away from the computer on which the Source Code is provided for inspection (the "Source Code
22 Computer" in the "Source Code Review Room"). The Producing Party shall install tools that are
23 sufficient for viewing and searching the code produced, on the platform produced, if such tools
24 exist and are presently used in the ordinary course of the Producing Party's business. The
25 Receiving Party's outside counsel and/or experts may request that commercially available
26 software tools for viewing and searching Source Code be installed on the secured computer,
27 provided, however, that (a) the Receiving Party possesses an appropriate license to such software
28 tools; (b) the Producing Party approves such software tools; and (c) such other software tools are

1 reasonably necessary for the Receiving Party to perform its review of the Source Code consistent
2 with all of the protections herein. The Receiving Party must provide the Producing Party with the
3 CD or DVD containing such licensed software tool(s) at least twenty-one (21) days in advance of
4 the date upon which the Receiving Party wishes to have the additional software tools available for
5 use on the Source Code Computer.

6 (ii) No recordable media or recordable devices, including without limitation
7 sound recorders, computers, cellular telephones, peripheral equipment, cameras, CDs, DVDs, or
8 drives of any kind, shall be permitted into the Source Code Review Room.

9 (iii) The Receiving Party's outside counsel and/or experts shall be entitled to
10 take notes relating to the Source Code but may not copy the Source Code into the notes and may
11 not take such notes electronically on the Source Code Computer itself or any other computer.

12 (iv) The Producing Party may visually monitor the activities of the Receiving
13 Party's representatives during any Source Code review, but only to ensure that no unauthorized
14 electronic records of the Source Code and no information concerning the Source Code are being
15 created or transmitted in any way.

16 (v) No copies of all or any portion of the Source Code may leave the room in
17 which the Source Code is inspected except as otherwise provided herein. Further, no other
18 written or electronic record of the Source Code is permitted except as otherwise provided herein.
19 The Producing Party shall make available a laser printer with commercially reasonable printing
20 speeds for on-site printing during inspection of the Source Code. The Receiving Party may print
21 limited portions of the Source Code only when necessary to prepare court filings or pleadings or
22 other papers (including a testifying expert's expert report). Any printed portion that consists of
23 more than five (5) pages of a continuous block of Source Code shall be presumed to be excessive,
24 and the burden shall be on the Receiving Party to demonstrate the need for such a printed copy.
25 The Receiving Party may print out no more than 20 pages total. The Receiving Party shall not
26 print Source Code in order to review blocks of Source Code elsewhere in the first instance, i.e., as
27 an alternative to reviewing that Source Code electronically on the Source Code Computer, as the
28 Parties acknowledge and agree that the purpose of the protections herein would be frustrated by

1 printing portions of code for review and analysis elsewhere, and that printing is permitted only
2 when necessary to prepare court filings or pleadings or other papers (including a testifying
3 expert's expert report). Upon printing any such portions of Source Code, the printed pages shall
4 be collected by the Producing Party. The Producing Party shall Bates number, copy, and label
5 "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" any pages
6 printed by the Receiving Party. Within fourteen (14) days, the Producing Party shall either (i)
7 provide one copy set of such pages to the Receiving Party or (ii) inform the Requesting Party that
8 it objects that the printed portions are excessive and/or not done for a permitted purpose. If, after
9 meeting and conferring, the Producing Party and the Receiving Party cannot resolve the
10 objection, the Receiving Party shall be entitled to seek a Court resolution of whether the printed
11 Source Code in question is narrowly tailored and was printed for a permitted purpose. The
12 burden shall be on the Receiving Party to demonstrate that such printed portions are no more than
13 is reasonably necessary for a permitted purpose and not merely printed for the purposes of review
14 and analysis elsewhere. The printed pages shall constitute part of the Source Code produced by
15 the Producing Party in this action.

16 (vi) All persons who will review a Producing Party's Source Code on behalf of
17 a Receiving Party, including members of a Receiving Party's outside law firm, shall be identified
18 in writing to the Producing Party at least five (5) days in advance of the first time that such person
19 reviews such Source Code. Such identification shall be in addition to any other disclosure
20 required under this Order. All persons viewing Source Code shall sign on each day they view
21 Source Code a log that will include the names of persons who enter the locked room to view the
22 Source Code and when they enter and depart. The Producing Party shall be entitled to a copy of
23 the log upon one (1) day's advance notice to the Receiving Party.

24 (vii) Unless otherwise agreed in advance by the Parties in writing, following
25 each day on which inspection is done under this Order, the Receiving Party's outside counsel
26 and/or experts shall remove all notes, documents, and all other materials from the Source Code
27 Review Room. The Producing Party shall not be responsible for any items left in the room
28 following each inspection session, and the Receiving Party shall have no expectation of

1 confidentiality for any items left in the room following each inspection session without a prior
2 agreement to that effect. Proper identification of all authorized persons shall be provided prior to
3 any access to the secure room or the computer containing Source Code. Proper identification
4 requires showing, at a minimum, a photo identification card sanctioned by the government of any
5 State of the United States, by the government of the United States, or by the nation state of the
6 authorized person's current citizenship. Access to the secure room or the Source Code Computer
7 may be denied, at the discretion of the supplier, to any individual who fails to provide proper
8 identification.

9 (viii) Other than as provided above, the Receiving Party will not copy, remove,
10 or otherwise transfer any Source Code from the Source Code Computer including, without
11 limitation, copying, removing, or transferring the Source Code onto any recordable media or
12 recordable device. The Receiving Party will not transmit any Source Code in any way from the
13 Producing Party's facilities or the offices of its outside counsel of record.

14 (ix) The Receiving Party's outside counsel of record may make no more than
15 three (3) additional paper copies of any portions of the Source Code received from a Producing
16 Party pursuant to Paragraph 11(c)(v), not including copies attached to court filings or used at
17 depositions, and shall maintain a log of all paper copies of the Source Code. The log shall
18 include the names of the reviewers and/or recipients of paper copies and locations where the
19 paper copies are stored. Upon one (1) day's advance notice to the Receiving Party by the
20 Producing Party, the Receiving Party shall provide a copy of this log to the Producing Party.

21 (x) The Receiving Party's outside counsel of record and any person receiving a
22 copy of any Source Code shall maintain and store any paper copies of the Source Code at their
23 offices in a manner that prevents duplication of or unauthorized access to the Source Code,
24 including, without limitation, storing the Source Code in a locked room or cabinet at all times
25 when it is not in use. No more than a total of ten (10) individuals identified by the Receiving
26 Party shall have access to the printed portions of Source Code (except insofar as such code
27 appears in any court filing or expert report).

1 (xi) For depositions, the Receiving Party shall not bring copies of any printed
2 Source Code. Rather, at least ten (10) days before the date of the deposition, the Receiving Party
3 shall notify the Producing Party about the specific portions of Source Code it wishes to use at the
4 deposition, and the Producing Party shall bring printed copies of those portions to the deposition
5 for use by the Receiving Party. Copies of Source Code that are marked as deposition exhibits
6 shall not be provided to the Court Reporter or attached to deposition transcripts; rather, the
7 deposition record will identify the exhibit by its production numbers. All paper copies of Source
8 Code brought to the deposition shall remain with the Producing Counsel's outside counsel for
9 secure destruction in a timely manner following the deposition.

10 (xii) Except as provided in this sub-paragraph, absent express written
11 permission from the Producing Party, the Receiving Party may not create electronic images, or
12 any other images, or make electronic copies, of the Source Code from any paper copy of Source
13 Code for use in any manner (including by way of example only, the Receiving Party may not scan
14 the Source Code to a PDF or photograph the code). Images or copies of Source Code shall not be
15 included in correspondence between the Parties (references to production numbers shall be used
16 instead), and shall be omitted from pleadings and other papers whenever possible. If a Party
17 reasonably believes that it needs to submit a portion of Source Code as part of a filing with the
18 Court, the Parties shall meet and confer as to how to make such a filing while protecting the
19 confidentiality of the Source Code and such Source Code will not be filed absent agreement from
20 the Producing Party that the confidentiality protections will be adequate. If a Producing Party
21 agrees to produce an electronic copy of all or any portion of its Source Code or provide written
22 permission to the Receiving Party that an electronic or any other copy needs to be made for a
23 Court filing, access to the Receiving Party's submission, communication, and/or disclosure of
24 electronic files or other materials containing any portion of Source Code (paper or electronic)
25 shall at all times be limited solely to individuals who are expressly authorized to view Source
26 Code under the provisions of this Order. Where the Producing Party has provided the express
27 written permission required under this provision for a Receiving Party to create electronic copies
28 of Source Code, the Receiving Party shall maintain a log of all such electronic copies of any

1 portion of Source Code in its possession or in the possession of its retained consultants, including
2 the names of the reviewers and/or recipients of any such electronic copies, and the locations and
3 manner in which the electronic copies are stored. Additionally, any such electronic copies must
4 be labeled “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” as provided
5 for in this Order.

6 **12. NOTICE OF DISCLOSURE**

7 (a) Prior to disclosing any Protected Material to any person described in Paragraph
8 8(b)(ii) (referenced in this section as “Person”), the Party seeking to disclose such information
9 shall provide the Producing Party with written notice that includes:

- 10 (i) the name of the Person;
11 (ii) the present employer and title of the Person;
12 (iii) an identification of all of the Person’s past and current employment and
13 consulting relationships for the past five (5) years.

14 (b) Prior to disclosing any Protected Material to any person described in Paragraphs
15 8(b)(iii), 9(b)(iii), or 10(c)(ii) (referenced in this section as “Person”), the Party seeking to
16 disclose such information shall provide the Producing Party with written notice that includes:

- 17 (i) the name of the Person;
18 (ii) an up-to-date curriculum vitae of the Person;
19 (iii) the present employer and title of the Person;
20 (iv) an identification of all of the Person’s past and current employment and
21 consulting relationships for the past five (5) years, including direct relationships and relationships
22 through entities owned or controlled by the Person, including but not limited to an identification
23 of any individual or entity with or for whom the person is employed or to whom the person
24 provides consulting services relating to the design, development, operation, or patenting of
25 systems and methods for making emergency calls, including emergency calls based on location,
26 and sending emergency messages, or relating to the acquisition of intellectual property assets
27 relating to systems and methods for making emergency calls, including emergency calls based on
28 location, and sending emergency messages;

1 (v) an identification of all pending patent applications on which the Person is
2 named as an inventor, in which the Person has any ownership interest, or as to which the Person
3 has had or anticipates in the future any involvement in advising on, consulting on, preparing,
4 prosecuting, drafting, editing, amending, or otherwise affecting the scope of the claims; and

5 (vi) a list of the cases in which the Person has testified at deposition or trial
6 within the last five (5) years.

7 Further, the Party seeking to disclose Protected Material shall provide such other information
8 regarding the Person's professional activities reasonably requested by the Producing Party for it
9 to evaluate whether good cause exists to object to the disclosure of Protected Material to the
10 outside expert or consultant. During the pendency of and for a period of one (1) year after the
11 final resolution of this action, including all appeals, the Party seeking to disclose Protected
12 Material shall immediately provide written notice of any change with respect to the Person's
13 involvement in the design, development, operation or patenting of systems and methods for
14 making emergency calls, including emergency calls based on location, and sending emergency
15 messages, or the acquisition of intellectual property assets relating to systems and methods for
16 making emergency calls, including emergency calls based on location, and sending emergency
17 messages.

18 (c) Within fourteen (14) days of receipt of the disclosure of the Person, the Producing
19 Party or Parties may object in writing to the Person for good cause. In the absence of an
20 objection at the end of the fourteen (14) day period, the Person shall be deemed approved under
21 this Protective Order. There shall be no disclosure of Protected Material to the Person prior to
22 expiration of this fourteen (14) day period. If the Producing Party objects to disclosure to the
23 Person within such fourteen (14) day period, the Parties shall meet and confer via telephone or in
24 person within seven (7) days following the objection and attempt in good faith to resolve the
25 dispute on an informal basis. If the dispute is not resolved, the Party objecting to the disclosure
26 will have seven (7) days from the date of the meet and confer to seek relief from the Court. If
27 relief is not sought from the Court within that time, the objection shall be deemed withdrawn. If
28

1 relief is sought, designated materials shall not be disclosed to the Person in question until the
2 Court resolves the objection.

3 (d) For purposes of this section, “good cause” shall include an objectively reasonable
4 concern that the Person will, advertently or inadvertently, use or disclose Discovery Materials in a
5 way or ways that are inconsistent with the provisions contained in this Order.

6 (e) Prior to receiving any Protected Material under this Order, the Person must
7 execute a copy of the “Agreement to Be Bound by Protective Order” (Exhibit A hereto) and serve
8 it on all Parties.

9 (f) An initial failure to object to a Person under this Paragraph 12 shall not preclude
10 the nonobjecting Party from later objecting to continued access by that Person for good cause. If
11 an objection is made, the Parties shall meet and confer via telephone or in person within seven (7)
12 days following the objection and attempt in good faith to resolve the dispute informally. If the
13 dispute is not resolved, the Party objecting to the disclosure will have seven (7) days from the
14 date of the meet and confer to seek relief from the Court. The designated Person may continue to
15 have access to information that was provided to such Person prior to the date of the objection. If
16 a later objection is made, no further Protected Material shall be disclosed to the Person until the
17 Court resolves the matter or the Producing Party withdraws its objection. Notwithstanding the
18 foregoing, if the Producing Party fails to move for a protective order within seven (7) business
19 days after the meet and confer, further Protected Material may thereafter be provided to the
20 Person.

21 **13. CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL**

22 (a) Timing of Challenges. Any Party or Non-Party may challenge a designation of
23 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
24 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
25 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
26 challenge a confidentiality designation by electing not to mount a challenge promptly after the
27 original designation is disclosed.

28 (b) Meet and Confer. The Challenging Party shall initiate the dispute resolution

1 process by providing written notice of each designation it is challenging and describing the basis
2 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
3 notice must recite that the challenge to confidentiality is being made in accordance with this
4 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
5 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
6 forms of communication are not sufficient) within 14 days of the date of service of notice. In
7 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
8 designation was not proper and must give the Designating Party an opportunity to review the
9 designated material, to reconsider the circumstances, and, if no change in designation is offered,
10 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
11 stage of the challenge process only if it has engaged in this meet and confer process first or
12 establishes that the Designating Party is unwilling to participate in the meet and confer process in
13 a timely manner.

14 (c) Judicial Intervention. If the Parties cannot resolve a challenge without court
15 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
16 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days
17 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
18 process will not resolve their dispute, whichever is earlier. Each such motion must be
19 accompanied by a competent declaration affirming that the movant has complied with the meet
20 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
21 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
22 shall automatically waive the confidentiality designation for each challenged designation. In
23 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
24 time if there is good cause for doing so, including a challenge to the designation of a deposition
25 transcript or any portions thereof. Any motion brought pursuant to this provision must be
26 accompanied by a competent declaration affirming that the movant has complied with the meet
27 and confer requirements imposed by the preceding paragraph.

28 (d) The burden of persuasion in any such challenge proceeding shall be on the

1 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass
2 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party
3 to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
4 file a motion to retain confidentiality as described above, all parties shall continue to afford the
5 material in question the level of protection to which it is entitled under the Producing Party's
6 designation until the court rules on the challenge

7 **14. SUBPOENAS OR COURT ORDERS**

8 (a) If at any time Protected Material is subpoenaed by any court, arbitral,
9 administrative, or legislative body, the Party to whom the subpoena or other request is directed
10 shall immediately give prompt written notice thereof to every Party who has produced such
11 Discovery Material and to its counsel and shall provide each such Party with an opportunity to
12 move for a protective order regarding the production of Protected Materials implicated by the
13 subpoena.

14 **15. FILING PROTECTED MATERIAL**

15 (a) Absent written permission from the Producing Party or a court Order secured after
16 appropriate notice to all interested persons, a Receiving Party may not file or otherwise disclose
17 in the public record any Protected Material.

18 (b) A Party that seeks to file under seal any Protected Material must comply with Civil
19 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order
20 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule
21 79-5, a sealing order will issue only upon a request establishing that the Protected Material at
22 issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law.
23 If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule
24 79-5(e) is denied by the court, then the Receiving Party may file the Protected Material in the
25 public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the court.

26 **16. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

27 (a) The inadvertent production by a Party of Discovery Material subject to the
28 attorney-client privilege, work-product protection, or any other applicable privilege or protection,

1 despite the Producing Party's reasonable efforts to prescreen such Discovery Material prior to
2 production, will not waive the applicable privilege and/or protection if a request for return of such
3 inadvertently produced Discovery Material is made promptly after the Producing Party learns of
4 its inadvertent production.

5 (b) Upon a request from any Producing Party who has inadvertently produced
6 Discovery Material that it believes is privileged and/or protected, each Receiving Party shall
7 immediately return such Protected Material or Discovery Material and all copies to the Producing
8 Party, except for any pages containing privileged markings by the Receiving Party which shall
9 instead be destroyed and certified as such by the Receiving Party to the Producing Party.

10 (c) Nothing herein shall prevent the Receiving Party from preparing a record for its
11 own use containing the date, author, addresses, and topic of the inadvertently produced Discovery
12 Material and such other information as is reasonably necessary to identify the Discovery Material
13 and describe its nature to the Court in any motion to compel production of the Discovery
14 Material.

15 **17. INADVERTENT FAILURE TO DESIGNATE PROPERLY**

16 (a) The inadvertent failure by a Producing Party to designate Discovery Material as
17 Protected Material with one of the designations provided for under this Order shall not waive any
18 such designation provided that the Producing Party notifies all Receiving Parties that such
19 Discovery Material is protected under one of the categories of this Order within a reasonable time
20 following the Producing Party learning of the inadvertent failure to designate. The Producing
21 Party shall reproduce the Protected Material with the correct confidentiality designation within
22 seven (7) days upon its notification to the Receiving Parties. Upon receiving the Protected
23 Material with the correct confidentiality designation, the Receiving Parties shall return or securely
24 destroy, at the Producing Party's option, all Discovery Material that was not designated properly.

25 (b) A Receiving Party shall not be in breach of this Order for any use of such
26 Discovery Material before the Receiving Party receives such notice that such Discovery Material
27 is protected under one of the categories of this Order, unless an objectively reasonable person
28 would have realized that the Discovery Material should have been appropriately designated with a

1 confidentiality designation under this Order. Once a Receiving Party has received notification of
2 the correct confidentiality designation for the Protected Material with the correct confidentiality
3 designation, the Receiving Party shall treat such Discovery Material (subject to the exception in
4 Paragraph 17(c) below) at the appropriately designated level pursuant to the terms of this Order.

5 (c) Notwithstanding the above, a subsequent designation of “CONFIDENTIAL,”
6 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – ATTORNEYS’
7 EYES ONLY – SOURCE CODE” shall apply on a going forward basis and shall not disqualify
8 anyone who reviewed “CONFIDENTIAL,” “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
9 or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” materials while the
10 materials were not marked “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
11 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” from engaging in the
12 activities set forth in Paragraph 6(b).

13 **18. INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER**

14 (a) In the event of a disclosure of any Discovery Material pursuant to this Order to any
15 person or persons not authorized to receive such disclosure under this Protective Order, the Party
16 responsible for having made such disclosure, and each Party with knowledge thereof, shall
17 immediately notify counsel for the Producing Party whose Discovery Material has been disclosed
18 and provide to such counsel all known relevant information concerning the nature and
19 circumstances of the disclosure. The responsible disclosing Party shall also promptly take all
20 reasonable measures to retrieve the improperly disclosed Discovery Material and to ensure that no
21 further or greater unauthorized disclosure and/or use thereof is made

22 (b) Unauthorized or inadvertent disclosure does not change the status of Discovery
23 Material or waive the right to hold the disclosed document or information as Protected.

24 **19. FINAL DISPOSITION**

25 (a) Not later than ninety (90) days after the Final Disposition of this case, each Party
26 shall return all Discovery Material of a Producing Party to the respective outside counsel of the
27 Producing Party or destroy such Material, at the option of the Producing Party. For purposes of
28 this Order, “Final Disposition” occurs after an order, mandate, or dismissal finally terminating the

1 above-captioned action with prejudice, including all appeals.

2 (b) All Parties that have received any such Discovery Material shall certify in writing
3 that all such materials have been returned to the respective outside counsel of the Producing Party
4 or destroyed. Notwithstanding the provisions for return of Discovery Material, outside counsel
5 may retain one set of pleadings, correspondence and attorney and consultant work product (but
6 not document productions) for archival purposes, but must return or destroy any pleadings,
7 correspondence, and consultant work product that contain Source Code.

8 **20. DISCOVERY FROM EXPERTS OR CONSULTANTS**

9 (a) Absent good cause, drafts of reports of testifying experts, and reports and other
10 written materials, including drafts, of consulting experts, shall not be discoverable. Draft reports,
11 notes, and outlines developed and drafted by testifying and/or consulting experts and/or their staff
12 are also exempt from discovery.

13 (b) Discovery of materials provided to testifying experts shall be limited to those
14 materials, facts, consulting expert opinions, and other matters actually relied upon by the
15 testifying expert in forming his or her final report, trial, or deposition testimony or any opinion in
16 this case. No discovery can be taken from any non-testifying expert except to the extent that such
17 non-testifying expert has provided information, opinions, or other materials to a testifying expert
18 relied upon by that testifying expert in forming his or her final report(s), trial, and/or deposition
19 testimony or any opinion in this case.

20 (c) No conversations or communications between counsel and any testifying or
21 consulting expert will be subject to discovery unless the conversations or communications are
22 relied upon by such experts in formulating opinions that are presented in reports or trial or
23 deposition testimony in this case.

24 (d) Materials, communications, and other information exempt from discovery under
25 the foregoing Paragraphs [[20(a)–(c)]] shall be treated as attorney-work product for the purposes
26 of this litigation and Order.

27 (e) Nothing in in this Protective Order, including Paragraphs [[20(a)–(d)]], shall alter
28 or change in any way the requirements in Paragraph 11 regarding Source Code, and Paragraph 11

1 shall control in the event of any conflict.

2 **21. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
3 **THIS LITIGATION**

4 (a) The terms of this Order are applicable to information produced by a Non-Party in
5 this action and designated as "CONFIDENTIAL," "CONFIDENTIAL – ATTORNEYS' EYES
6 ONLY" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE." Such
7 information produced by Non-Parties in connection with this litigation is protected by the
8 remedies and relief provided by this Order. Nothing in these provisions should be construed as
9 prohibiting a Non-Party from seeking additional protections.

10 (b) In the event that a Party is required, by a valid discovery request, to produce a
11 Non-Party's confidential information in its possession, and the Party is subject to an agreement
12 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

13 (i) promptly notify in writing the Requesting Party and the Non-Party that
14 some or all of the information requested is subject to a confidentiality agreement with a Non-
15 Party;

16 (ii) promptly provide the Non-Party with a copy of the Stipulated Protective
17 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
18 the information requested; and

19 (iii) make the information requested available for inspection by the Non-Party.

20 (c) If the Non-Party fails to object or seek a protective order from this court within 14
21 days of receiving the notice and accompanying information, the Receiving Party may produce the
22 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
23 seeks a protective order, the Receiving Party shall not produce any information in its possession
24 or control that is subject to the confidentiality agreement with the Non-Party before a
25 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
26 burden and expense of seeking protection in this court of its Protected Material.

27 **22. MISCELLANEOUS**

28 (a) Right to Further Relief. Nothing in this Order abridges the right of any person to

1 seek its modification by the Court in the future. By stipulating to this Order, the Parties do not
2 waive the right to argue that certain material may require additional or different confidentiality
3 protections than those set forth herein.

4 (b) Termination of Matter and Retention of Jurisdiction. The Parties agree that the
5 terms of this Protective Order shall survive and remain in effect after the Final Determination of
6 the above-captioned matter. The Court shall retain jurisdiction after Final Determination of this
7 matter to hear and resolve any disputes arising out of this Protective Order.

8 (c) Successors. This Order shall be binding upon the Parties hereto, their attorneys,
9 and their successors, executors, personal representatives, administrators, heirs, legal
10 representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and
11 experts, and any persons or organizations over which they have direct control.

12 (d) Right to Assert Other Objections. By stipulating to the entry of this Protective
13 Order, no Party waives any right it otherwise would have to object to disclosing or producing any
14 information or item. Similarly, no Party waives any right to object on any ground to use in
15 evidence of any of the material covered by this Protective Order. This Order shall not constitute a
16 waiver of the right of any Party to claim in this action or otherwise that any Discovery Material,
17 or any portion thereof, is privileged or otherwise non-discoverable, or is not admissible in
18 evidence in this action or any other proceeding.

19 (e) Burdens of Proof. Notwithstanding anything to the contrary above, nothing in this
20 Protective Order shall be construed to change the burdens of proof or legal standards applicable in
21 disputes regarding whether particular Discovery Material is confidential, which level of
22 confidentiality is appropriate, whether disclosure should be restricted, and if so, what restrictions
23 should apply.

24 (f) Modification by Court. This Order is subject to further court order based upon
25 public policy or other considerations, and the Court may modify this Order sua sponte in the
26 interests of justice. The United States District Court for the Northern District of California is
27 responsible for the interpretation and enforcement of this Order. All disputes concerning
28 Protected Material, however designated, produced under the protection of this Order shall be

resolved by the United States District Court for the Northern District of California.

(g) Discovery Rules Remain Unchanged. Nothing herein shall alter or change in any way the discovery provisions of the Federal Rules of Civil Procedure, the Local Rules for the United States District Court for the Northern District of California, or the Court's own orders. Identification of any individual pursuant to this Protective Order does not make that individual available for deposition or any other form of discovery outside of the restrictions and procedures of the Federal Rules of Civil Procedure, the Local Rules for the United States District Court for the Northern District of California, or the Court's own orders.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: February 19, 2019

O'MELVENY & MYERS LLP

/s/ Luann L. Simmons
David R. Eberhart (S.B. #195474)
deberhart@omm.com
Luann L. Simmons (S.B. #203526)
lsimmons@omm.com
O'MELVENY & MYERS LLP
Two Embarcadero Center, 28th Floor
San Francisco, California 94111-3823
Telephone: (415) 984-8700
Facsimile: (415) 984-8701

Attorneys for Defendant
APPLE INC.

KELLEY DRYE & WARREN LLP

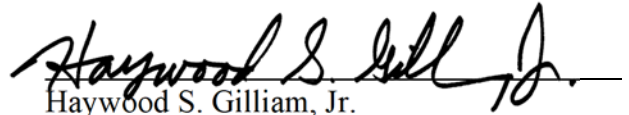
/s/ Michael J. Zinna
Michael J. Zinna (admitted *pro hac vice*)
mzinna@kelleydrye.com
Lee Brenner (State Bar No. 180235)
lbrenner@kelleydrye.com
David Fink (State Bar No. 169212)
dfink@kelleydrye.com
David G. Lindenbaum (*pro hac vice*)
dlindenbaum@kelleydrye.com
Whitney M. Smith (*pro hac vice*)
wsmith@kelleydrye.com
KELLEY DRYE AND WARREN LLP
101 Park Avenue
New York, New York 10178
Telephone: (212) 808-7800

Attorneys for Plaintiff
ZOMM, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: February 21, 2019


Haywood S. Gilliam, Jr.
United States District Court Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

I, _____, acknowledge and declare that I have received a copy of the Protective Order (“Order”) in Zomm, LLC v. Apple Inc., United States District Court, Northern District of California, Civil Action No. 4:18-cv-04969-HSG. Having read and understood the terms of the Order, I agree to be bound by the terms of the Order and consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Order.

Name of individual: _____

Present occupation/job description: _____

Name of Company or Firm: _____

Address: _____

Dated: _____

[Signature]